

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - FLINT**

In re:

NORMAN R. BRACKINS, JR.,

Debtor.

Case No. 04-34406

Chapter 13

Hon. Walter Shapero

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OPINION ON CRAM DOWN VALUE OF MANUFACTURED HOME

At issue is the valuation of Debtor's manufactured home for purposes of its cram down treatment in Debtor's Chapter 13 Plan of the secured claim of 21st Mortgage Corporation ("21st Mortgage"). That valuation was the subject of testimony and evidence at an evidentiary hearing held on May 4, 2005. The parties agreed that the valuation standard to be used was the "replacement" value, which in a case involving a Chapter 13 Plan pursuant to which Debtor intended to continue to own and occupy the home, the parties took to mean (and *Associates Commercial Corp. v. Rash*, 520 U.S. 953 (1991) requires) essentially what a willing buyer would pay to obtain like property from a willing seller. The confirmation hearing is presently scheduled for May 17, 2005, and Debtor indicates the Court's valuation conclusion could bear materially on confirmability. 21st Mortgage has objected to the valuation proposed by Debtor, arguing that the value of the manufactured home is much higher than what Debtor proposes in his Chapter 13 Plan.

For purposes of determining the value of collateral for Chapter 13 cram down, the burden is upon the Debtor. *See In re Brown*, 244 B.R. 603, 610-11 (Bankr. W.D. Va. 2000) ("Accordingly, because the creditor's rights are being reduced or eliminated, it seems appropriate that the burden of proof in such a situation should be placed upon the party benefitting from the process, i.e., the

debtor.”) Both Debtor and 21st Mortgage produced experts and their written reports, and it falls to the Court to assess the evidence.

The Debtor’s schedules and his proposed plan value the home at \$25,000. 21st Mortgage’s expert valued it at from \$41,000 to \$43,900. Debtor’s expert valued it at \$27,080, which has become the Debtor’s proposed figure. Both experts derived their expertise from experience rather than formal schooling or training as appraisers. 21st Mortgage’s expert is primarily involved in the selling of manufactured homes, and Debtor’s expert somewhat likewise, but also with a smattering of appraisal training. The Court concludes that neither’s testimony should be given greater weight than the other on that score alone. Both experts appear to have utilized a so-called “NADA” guide covering sales of manufactured homes (apparently comparable to a similar guide compiling similar data for the sale of vehicles).

Debtor’s expert’s written appraisal took some NADA number as a starting point (\$38,999) and subtracted therefrom the cost of various items she concluded needed repairing (totaling \$11,920), thus calculating and concluding the replacement value to be the indicated \$27,080. Her appraisal also indicated that manufactured homes on average depreciate from \$1,200 to \$1,500 annually. This particular home was purchased in 1996 or 1997 for approximately \$42,000. Utilization of a cost-less-depreciation approach to value would produce a figure of between \$30,000 and \$32,400. While the Court believes that Debtor’s expert was somewhat more thorough in her inspection and back-up inquiries, what is not sufficiently clear (and potentially material) is whether or not or to what extent the NADA number she used as a starting point took into account all or some of the conditions she concluded required repairing and by which she reduced her valuation figure. Furthermore, the largest item she indicated needing repair (involving some \$5,000 to \$6,000 of the \$11,020) was an estimate given her on a sight-unseen basis.

21st Mortgage's expert, while not generally opposing reference to the NADA for purposes of valuing manufactured homes, seemed to rely more on her experience and personal knowledge gained through sales of what she felt were comparable manufactured homes. Comparable sales arguably may indeed be the more reliable (though not the only) measure of replacement value. However, 21st Mortgage's expert, while referring to a sale of a manufactured home of similar make in August 2004, did not detail her comparables with sufficient specificity to permit the Court to give her opinion the benefit of the differences.

In weighing the testimony of both experts and given that Debtor has the burden of proof, the Court concludes that the Debtor's expert provided a more experienced and reliable opinion on the replacement value for this manufactured home. While the comparables approach offered by 21st Mortgage's expert might in other circumstances be given greater weight in this determination, this expert's opinion in this particular instance was insufficiently supported with appropriate comparatives analysis and related data to permit it to be given that greater weight. The Court therefore concludes the cram down valuation to be utilized in Debtor's plan should be \$32,000, a number closer to the Debtor's value and additionally within the range of the Debtor's expert's approach with appropriate allowances for the indicated factors. The case should continue forward to the confirmation hearing based thereon.

WALTER SHAPERO
U.S. Bankruptcy Judge

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